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Attorney for Defendant
FRANCISCO JAVIER HERNANDEZ-GUTIERREZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08cr0207-BEN
)	
Plaintiff,)	STATEMENT OF FACTS
)	AND
v.)	POINTS AND AUTHORITIES
)	
FRANCISCO JAVIER HERNANDEZ-)	
GUTIERREZ,)	Date: 3/10/08
)	Time: 2:00 p.m.
Defendant.))	Court: Judge BENITEZ
_____)	

STATEMENT OF FACTS

On January 8, 2008 at about 8:50 a.m. defendant approached a checkpoint located on Highway 111 near Niland, California. Defendant was driving a semi-trailer truck. A search of the vehicle revealed the presence of a person in the storage compartment of the cab of the truck. It was determined that the person was illegally in the U.S. The defendant was arrested.

POINTS AND AUTHORITIES

1.
1. **STATEMENT OF DEFFENDANT.** Pursuant to *Federal Rule of Criminal Procedure 16(a)(1)(A) and (B)*, *Brady v. Maryland*, 373 U.S. 83 (1963) and the *Fifth* and *Sixth* Amendments to the *United States Constitution*, defendant requests disclosure of any statements, whether oral, written, or recorded made by him which are in the possession, custody, or control of the government, or which by the exercise of due diligence may become known to the government, regardless of to whom made. A defendant has the right to inspect any copy written or recorded statements made by him to government agents or within the custody or control of the government. This rule has been extended to permit discovery or a written summary of the defendant's oral statement contained the handwritten notes of the government agent. *United States v. Johnson*, 525 F.2d 999 (2nd Cir. 1975); *United States v. Pilnick*, 267 F. Supp. 791 (S.D.N.Y. 1976; *Loux v. United States*, 389 F.2d 911 (9th Cir. 1968).

2. **DEFENDANT'S CRIMINAL RECORD.** Pursuant to *Federal Rule of Criminal Procedure 16(a)(1)(D)*, defendant requests disclosure of his criminal record.

1 3. **DOCUMENTS, TANGIBLE OBJECT, REPORTS.** Pursuant to
2 *Federal Rule of Criminal Procedure 16(a)(1)(E)* defendant
3 requests the opportunity to inspect and copy or photograph all
4 books, papers, documents, data, photographs, and tangible
5 objects buildings or places which are enumerated in subsections
6 (i), (ii) and (iii).

8 4. **REPORTS OF EXAMINATIONS AND TESTS.** Defendant also
9 requests any and all results and reports of scientific tests or
10 experiments conducted by the government pursuant to *Federal Rule*
11 *of Criminal Procedure 16(a)(1)(F)*.

13 5. **EXPERT WITNESSES.** Pursuant to *Federal Rule of*
14 *Criminal Procedure 16(a)(1)(G)* defendant requests disclosure of
15 a written summary of testimony the government intends to use
16 under *Federal Rules of Evidence 702, 703, or 705*.

18 6. **NOTICE OF GOVERNMENT'S INTENT TO USE EVIDENCE.**
19 *Federal Rule of Criminal Procedure 12(b)(4) (B)* provides in
20 pertinent part:

21
22 "At the arraignment or as soon thereafter
23 as practicable the defendant may, in order
24 to have an opportunity to move to suppress
25 under Rule 12 (b)(3)(C), request
26 notice of the government's intention to use
27 (in its evidence-in-chief at trial) any evidence
28 which the defendant may be entitled to discover

1 under Rule 16."

2
3 The purpose of this rule is to avoid needless motions
4 by the defense to suppress evidence that is not going to be used
5 at trial. The Rule places a burden on the government to review
6 its case and let the defendant know what evidence the government
7 is going to use. In this way, the Rule seeks to "eliminate from
8 the trial disputes over police conduct not immediately relevant
9 to the question of guilt." *Jones v. United States*, 362 U.S.
10 257, 264 (1960).
11

12
13 7. **RULE 404(b) EVIDENCE.** Defendant requests the
14 government be ordered to provide discovery and reasonable notice
15 of evidence of other crimes, wrongs, or acts of the defendant
16 that the government contends may be proof of motive,
17 opportunity, intent, preparation, plan, knowledge, identity, or
18 absence of mistake or accident. Defendant must have access to
19 such evidence in order to be able to make a timely motion to
20 exclude it at trial and for the purposes of the "balancing"
21 required by *Rule 403*. See *United States v. Cook*, 609 F.2d 1174
22 (9th Cir. 1985).
23

24
25 8. **RULE 609 EVIDENCE.** Defendant requests that the
26 government produce all evidence of prior convictions of the
27 defendant that the government intends to introduce at trial, for
28 impeachment purposes, in the event the defendant testifies.

1 Pretrial production of such convictions is necessary in order
2 that the defendant may determine whether such convictions are
3 admissible under *Rules 403 and 609*. The defendant further
4 requests that the government supply the defendant with the
5 notice required by *Rule 609(b)* relative to convictions in excess
6 of 10 years old which the government intends to use for
7 impeachment at trial.
8

9 **9. PRESERVATION OF AGENTS' ROUGH NOTES.** Defendant
10 requests an order that the rough notes of agents be ordered
11 preserved at this time so that appropriate motions may be
12 brought in the future of their production. *United States v.*
13 *Harris*, 543 F.2d 1247 (9th Cir. 1976).
14

15 **10. TIMETABLE FOR DISCLOSURE OF JENCKS MATERIAL.**
16 Defendant requests that the court establish a timetable for
17 disclosure of *Jencks* material pre-trial to avoid unnecessary
18 delay during the trial for investigation and in order that
19 counsel may prepare for cross-examination.
20

21 **11. GOVERNMENT AGREEMENTS WITH WITNESSES.** Defendant
22 requests disclosure of all agreements between the government and
23 prosecution witnesses which may tend to show bias or motive not
24 to tell the truth.
25

26 **12. BRADY AND GIGLIO MATERIAL.** Pursuant to *Brady v.*
27 *Maryland*, 373 U.S. 383 (1963), *United States v. Agurs*, 42 U.S.
28 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972),

1 defendant requests that the court order the government to
2 disclose all evidence in its possession favorable to him on the
3 issue of guilt, or evidence which tends to effect the
4 credibility of the prosecution's case
5

6 **15. GOVERNMENT REVIEW OF LAW ENFORCEMENT PERSONNEL FILES.**

7 The defendant requests that the government examine the personnel
8 files and any other files within its custody, care or control,
9 or which could be obtained by the government, for all testifying
10 witnesses, including testifying officers and agents who may have
11 been controlling or contacting any confidential informant who
12 may be involved in this case. The defendant requests that these
13 files be reviewed by the government attorney for evidence of
14 perjurious conduct or other like dishonesty, or any other
15 material relevant to impeachment, or any information that is
16 exculpatory, pursuant to its duty under *U.S. v. Henthorn*, 931
17 F.2d 29 (9th Cir. 1991). See *U.S. v. Jennings*, 960 F.2d 1488,
18 1492 (9th Cir. 1992).
19
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21 Dated: February 21, 2008
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23
24 Respectfully submitted,
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26 Attorney for Defendant
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